IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

MFA.No. 855 of 1998(B)

OPMV.708/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA
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APPELLANT/APPLICANT:

BIJUKUMAR, S/o. SREEKANTAN NAIR,
KUZHIYAMVILA THIRUVATHIRA VEEDU,
PUNNAKULAM, KOTTUKAL DESOM AND VILLAGE,
NEYYATTINKARA TALUK.

BY ADV. SRI.G.S.REGHUNATH
SRI.MOHAN JACOB GEORGE

RESPONDENTS/RESPONDENTS:
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1. **THE MANAGING DIRECTOR,**
   K.S.R.T.C. CHIEF OFFICE, FORT,
   THIRUVANANTHAPURAM (OWNER).

2. **JUSTIN RAJ, S/o.JOBBY,**
   VALICHIVILA MEKKE PUTHEN VEEDU,
   PARANIYAM, POOVAR (DRIVER)

BY ADV. SRI.K.PRABHAKARAN, SC. , K.S.R.T.C

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No.855 of 1998

Dated this the 17th day of September, 2007.

JUDGMENT

Koshy, J:

Appellant suffered serious injury while he was driving an autorickshaw. He claimed compensation of Rs.1,50,000/- as his left wrist was injured. According to him, he is unable to drive an autorickshaw because of the injury. The Tribunal found that accident occurred due contributory negligence of the appellant also and fixed contributory negligence at 40% and negligence on the part of driver of the K.S.R.T.C. was fixed at 60%. The finding of contributory negligence as well as quantum of compensation are disputed in the appeal.

2. Appellant was examined as PW1. He deposed that the accident occurred because second respondent was driving the vehicle in a rash and negligent manner and the bus hit behind the back of the autorickshaw. He was not cross-examined at all. Ext.A1 is the copy of the F.I.R. After investigation, 2nd respondent, driver of the K.S.R.T.C bus was charge-sheeted by the police. The AMVI's report Ext.A4 shows that the bus hit behind the autorickshaw but contributory negligence merely on the basis of position of the autorickshaw after the accident on the basis of scene

mahazar, according to the applicant after the hit due to the impact of hit autorickshaw moved away from the place of actual hit. The evidence in this case only shows that the accident occurred solely due the negligence of he 2nd respondent, the driver of the K.S.R.T.C. bus and the manner it hit autorickshaw behind back. Oral and documentary evidence also support the above. Claimant was not cross-examined. Merely because of the scene mahazar, it cannot be said that the appellant was negligent. Hence, the finding of contributory negligence is set aside.

With regard to amount of compensation, the Tribunal awarded Rs.40,160/-. Considering the nature of the injuries, we are of the opinion that no enhancement is required. Out of Rs.40,160/- compensation granted was only Rs.24,096/- . The finding regarding 40% contributory negligence is set aside. The claimant is entitled to balance amount of Rs.16,064/- also. The above amount should also be deposited by the first respondent KSRTC with 7% interest from the date of application till it's deposit over and above the decreed amount by the Tribunal. On deposit, the appellant is allowed to withdraw the same.

Appeal is partly allowed.

SD/-
J.B.KOSHY,
Judge.

SD/-
K. HEMA,
Judge.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No.855 of 1998

JUDGMENT

17th day of September, 2007